

Delegate Willoner.

DELEGATE WILLONER: This does not spell out just what the jurisdiction of the district court will be in this particular area.

Therefore, it is quite possible that the legislature could, although it is unlikely, establish that the most serious crimes could be tried with a six-man jury. This is dangerous unless it is more carefully drafted.

THE CHAIRMAN: Will Delegate Henderson yield the floor to answer a question by Delegate Marion?

DELEGATE HENDERSON: I yield.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: Is it your intention that if the General Assembly should provide for a six-man jury at the district court level that that provision would satisfy the constitutional right spelled out in section 5(A) of the right to have a trial by an impartial jury of twelve?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: Well, I think since they are both part of the same section, they have to be construed together.

This would satisfy that. In other words, this is limited to the other courts and the other rule applies to the upper courts. That is the way I construe it.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: I guess my question, stated a little broader or further, would be whether this would satisfy that requirement, or if the General Assembly did provide for a six-man jury, that it would require a waiver by the defendant of the right to have a twelve man jury as provided in the sentence before or could the defendant only be tried by such a jury with his consent?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: It was not my intention to make it depend on his consent. Of course the legislature could prescribe that, just as they give the right to oust the jurisdiction of the court by electing to go to higher court. If the legislature saw fit to do that I suppose they could do it, but I do not think it is required.

THE CHAIRMAN: Delegate Marion, the Chair believes from Delegate Henderson's answers to previous questions, that he intended by his amendment to allow for the General Assembly to provide for juries of not more than six but required that such verdict be unanimous.

If so provided by the General Assembly it could take the place of the requirement of a jury of twelve, is that correct?

DELEGATE HENDERSON: That is correct.

THE CHAIRMAN: Delegate Marion.

DELEGATE MARION: If the General Assembly were to provide for a six-man jury in the district court, would it be your intention by this amendment to limit the General Assembly in any way from either allowing or denying a subsequent trial or an appeal with a trial *de novo* before a jury of twelve in the superior court?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: No, I think the legislature would be perfectly free to allow that as they have in the past, if they desire to do so, but I do not think it would be necessary that they provide for a jury trial at the lower level.

THE CHAIRMAN: Before putting the question, the Chair is disturbed by the statement made by Delegate Rybczynski in the course of debate which has not been challenged by any other speaker.

The Chair believes that the implication of Delegate Rybczynski's comment was that the legislature would not have the power to provide a jury in the district court and as the Chair recalls the provisions of Committee Recommendation JB-1, approved by the Committee of the Whole, the legislature would have the power to prescribe trial by jury in the district court.

I would like to ask the Chairman of the Committee whether it is intended by the provisions of section 5(A) in any way to circumscribe the power of the legislature under the Committee Recommendation JB-1 with respect to the jurisdiction of the district court?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, the matter has not been considered on any kind of a basis because all we are doing in this Recommendation is to assure a jury trial.

Now, in the present situation, there is a provision that in any magistrate's court—perhaps the district court would supercede with what in effect may be a larger jurisdiction—if a person is brought before the magistrate, he must give the accused an opportunity to ask for a jury trial, and if he asks for it, the matter is referred to the superior court.